IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4676 OF 1995

1. Shri Abdul Latif Nabisaheb Bhagwan, and anr. .. Petitioners.

Vs

1. The State of Maharashtra and ors. .. Respondents

Mr T.S.Ingole, for the petitioners.
Mr Y.D.Mulani, AGP for respondent nos 1 to 3.

CORAM : B.H.MARLAPALLE & D.B.BHOSALE,JJ.
DATE : March 08, 2006.

ORAL JUDGMENT : (B.H.MARLAPALLE,J.)

1. The petitioners are aggrieved by an order dated 18.7.1994 passed by the Additional Commissioner for Pune Division as a revisional authority within the meaning of Section 34 of the Urban Land (Ceiling and Regulation) Act, 1976 (for short, "the Act"). They state that the said order is illegal and contrary to the facts placed on record and, therefore, under the supervisory powers of this Court it is required to be quashed and set aside. The undisputed facts leading to this writ petition would be, briefly, stated as under.

2. The petitioners are members of the same family, i.e. petitioner no.1 is the son of petitioner no.2 Nabisaheb. The petitioners along with the wife of petitioner no.2-Smt Chandbi received a notice from the

competent authority and the Dy.Collector under the Act and, therefore, submitted returns on or about 10.7.1984 pointing out that they were holding as two separate units' total land of 7000 sq.meters in the Sangli Urban Agglomeration and thus each unit was holding 3500 sq.meters of the urban land. It appears that the Dy. Collector passed an order on or about 26.9.1986 and accepted two separate units of the petitioners family and declared that by giving the benefit of 2000 sq.meters to each of the family, balance land 3000 sq.meters was to be declared as surplus. However, 400 sq.meters land was consumed for road development and therefore the balance of land 2600 sq.meters was declared as surplus. It appears that the petitioners after a gap of two years approached the Dy. Collector presumably under section 45 of the Act and the new Dy. Collector allowed the same application by his order dated 12.12.1988. In this order the Dy.Collector held that the area consumed by the road development came to 1,474.25 sq.meters and, therefore, the surplus land was changed from 2600 sq.meters to 1,525.75 sq.meters. The State Government issued a notification on 17.11.1992 appointing the Additional Commissioner as the Divisional Authority and directing him to exercise revisional powers under section 34 of the Act suo motu. The Addl. Divisional Commissioner considered the total holding of the petitioners' family in survey nos. 900/7,

900/6,900/3 and 901/3 on the basis of 7/12 extracts and recorded a finding that the total holding of the family came to 11,600 sq.meters.

3. As per the revisional authority, petitioner no.1 Abdul Latif was born on 4.5.1961 and, therefore, on the appointed day, i.e. 17.2.1976 he was a minor and consequently he was not entitled for the benefit of a separate family unit to be counted in his name. In addition, the Addl. Divisional Commissioner noted that the Dy.Collector in the very first order committed an error by accepting the total family holding as 7000 sq.meters instead of 11,600 sq.meters.

4. We have considered the arguments advanced before us by the learned counsel for the petitioners and also the holdings of all the three members of the family. viz. (i) Abdul Latif (son)-35 Gunthas, (ii) Nabisaheb-46 Gunthas and (iii) Chandbi-35 Gunthas. The total holding of the family came to 2 acres and 35 gunthas which is also equivalent to 11,600 sq.meters. As on the day the return was submitted by the petitioners on 10.7.1984 in response to the notice received from the Dy.Collector, Abdul Latif was a major and, therefore, when the first order was passed on or about 26.9.1986 by the Dy.Collector, he was entitled to claim a separate family unit, apart from the

family unit of his father Nabisaheb. Amongst the three joint holders, i.e. parents and the son, the total holding has been rightly recorded as 11,600 sq.meters and two separate units of the father and son having been considered, there will be a deduction of 2000 sq.meters for each unit, i.e. total of 4000 sq.meters. The balance land would remain as surplus land of 7600 sq.meters.There can be no dispute that for the road development the land admeasuring 400 sq.meters has been consumed and this will have to be deducted from the total surplus available and accordingly net surplus from the holding of the petitioners comes to 7200 sq.meters as against 9200 sq.meters declared by the Addl.Commissioner by the impugned order.

5. In the premises, the impugned order is modified and we hereby declare that the total surplus land from the holding of the petitioners under the Sangli Urban Agglomeration works out to 7200 sq.meters and the same shall be taken over by the competent authority by following the due process of law. The writ petition is partly allowed in terms of this modification, but without any order as to costs. The interim order stands vacated.

(D.B.BHOSALE, J.) **(B.H.MARLAPALLE,J.)**